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FCC Form 603
Main Form

FCC Application for Assignments of Authorization and Transfers of Control:
Wireless Telecommunications Bureau
Public Safety and Homeland Security Bureau

Approved by OMB
3060 - 0800
See instructions for
public burden estimate
FILED/ACCEPTED
JUN 19 2012

General Information

Federal Communications Commission
Office of the Secretary

1) Application Purpose (Select only one) (AA)	
AA - Assignment of Authorization TC - Transfer of Control	AM - Amendment WD - Withdrawal
NT - Required Notification (For Consummation of an Assignment or Transfer) EX - Request for Extension of Time (To Consummate an Assignment or Transfer)	
2) If this application is for an Amendment (AM) or Withdrawal (WD), enter the File Number of the pending or consented to application currently on file with the FCC.	File Number:
3a) Is this application for Assignment of Authorization or Transfer of Control part of a series of applications involving other wireless license(s) held by the Licensee, affiliates of the Licensee (e.g., parents, subsidiaries, or commonly-controlled entities), or third parties that are not included on this application and for which Commission approval or notification is required?	(N) <u>Yes</u> <u>No</u>
3b) If the answer to 3a is 'Y', is this filing the lead application?	() <u>Yes</u> <u>No</u>
3c) If the answer to 3b is 'N', provide the File Number of the lead application.	File Number:
3d) Does this transaction for Assignment of Authorization or Transfer of Control involve the assignment or transfer of non-wireless licenses/authorizations for which Commission approval or notification is required?	(N) <u>Yes</u> <u>No</u>
4) Are attachments (other than associated schedules) being filed with this application?	(Y) <u>Yes</u> <u>No</u>

Fees and Waivers

5a) Is the Applicant exempt from FCC application fees? If 'Y', attach an exhibit demonstrating how the Applicant is exempt from FCC application fees.	(N) <u>Yes</u> <u>No</u>
5b) Is a waiver/deferral of the FCC application fees being requested and the application fees are not being submitted in conjunction with this application? If 'Y', attach a date-stamped copy of the request for waiver/deferral of the FCC application fees.	(N) <u>Yes</u> <u>No</u>
6a) Does this application include a request for waiver of the Commission's Rules (other than a request for application fee waivers)? If 'Y', attach an exhibit specifying the rule section(s) for which a waiver is being requested and including a justification for the waiver request.	(Y) <u>Yes</u> <u>No</u>
6b) If 6a is 'Y', enter the number of rule sections involved.	Number of Rule Sections: <u>3</u>

Additional Transaction Information

7a) Has this application for Assignment of Authorization or Transfer of Control already occurred?	(N) <u>Yes</u> <u>No</u>
7b) If the response to Item 7a is 'Y', provide the date the event occurred:	(MM/DD/YYYY)
8) The Assignment of Authorization or Transfer of Control is:	(X) Voluntary () Involuntary
9a) Is this application a <i>pro forma</i> Assignment of Authorization or Transfer of Control?	(N) <u>Yes</u> <u>No</u>
9b) If Item 9a is 'Y', is this a post-consummation notification that is being filed under the Commission's forbearance procedures pursuant to Section 1.948(c)(1) of the Commission's Rules?	() <u>Yes</u> <u>No</u>
10a) Does this application involve the partitioning and/or disaggregation of geographic-area licenses? If 'Y', complete Schedule B and, if applicable, Schedule C.	(N) <u>Yes</u> <u>No</u>
10b) If 10a is 'N', does this application involve the partial assignment of site-based licenses?	(N) <u>Yes</u> <u>No</u>

<p>11) How will/has the Assignment of Authorization or Transfer of Control be/been accomplished? Select One: (S)</p> <p><u>S</u>ale or other assignment of assets <u>C</u>ourt order <u>R</u>eorganization or liquidation</p> <p><u>T</u>ransfer of stock or other ownership interests</p> <p><u>O</u>ther (voting trust agreement, management contract, etc.): _____</p>

Designated Entity Information (If 12a, 12b or 12c is 'Y', Schedule A is required to be completed.)

<p>12a) Enter 'Y' if this application for Assignment of Authorization or Transfer of Control involve any licenses that were originally granted before April 25, 2006, and that were awarded with bidding credits within the last five years and/or any licenses that were originally granted after April 25, 2006, and that were awarded with bidding credits within the last ten years? Otherwise, enter 'N'.</p> <p>The initial grant date is the date that the license was originally granted by the Commission after an auction, even if the license was acquired in the secondary market. The initial grant date is not the date on which the Commission granted an assignment or transfer of control of the license.</p> <p>If the response to this item is 'Y', the licenses may be subject to the FCC's unjust enrichment rules. See Section 1.2111(d), (e) of the Commission's Rules. If the response to 12a is 'Y', Schedule A must be completed.</p>	(N) <u>Y</u> es <u>N</u> o
<p>12b) Does this application for Assignment of Authorization or Transfer of Control involve any licenses that were originally subject to the Commission's installment payment plan?</p>	() <u>Y</u> es <u>N</u> o
<p>12c) Does this application for Assignment of Authorization or Transfer of Control involve any licenses that were originally granted pursuant to closed bidding within the last five years?</p>	() <u>Y</u> es <u>N</u> o

Competition Related Information

<p>13) Does this application for Assignment of Authorization or Transfer of Control involve a license(s) that may be used for interconnected mobile voice and/or data services that would, if assigned or transferred, create a geographic overlap with another license(s) in which the Assignee/Transferee already holds direct or indirect interests (of 10 percent or more), either as a Licensee or spectrum lessee/sublessee, and that also could be used to provide interconnected mobile voice and/or data services?</p>	() <u>Y</u> es <u>N</u> o
<p>14a) Does the Assignee/Transferee hold direct or indirect interests (of 10 percent or more) in any entity that already has access to 10 MHz or more spectrum in the Cellular Radiotelephone, broadband PCS, or Specialized Mobile Radio (SMR) services through license(s), lease(s), or sublease(s) in the same geographic area?</p>	() <u>Y</u> es <u>N</u> o
<p>14b) Would/does this application for Assignment of Authorization or Transfer of Control reduce the number of entities providing service (using spectrum in any of the three services listed in Item 14a) in the affected market(s)?</p>	() <u>Y</u> es <u>N</u> o

Broadband Radio Service and Educational Broadband Service Information

<p>15a) Will the requested facilities be used to provide multichannel video programming service?</p>	() <u>Y</u> es <u>N</u> o
<p>15b) If 15a is 'Y', does the Assignee/Transferee operate, control or have an attributable interest (as defined in Section 27.1202 of the Commission's Rules) in a cable television system whose franchise area is located within the geographic area of the requested facilities?</p> <p>If 'Y', provide an exhibit explaining how the Assignee/Transferee complies with Section 27.1202 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission's Rule(s) is being requested, 6a must be answered 'Y'.</p>	() <u>Y</u> es <u>N</u> o
<p>16) Does the Assignee/Transferee comply with the programming requirements contained in Section 27.1203 of the Commission's Rules?</p> <p>If 'N', provide an exhibit explaining how the Assignee/Transferee complies with Section 27.1203 of the Commission's Rules or justifying a waiver of that rule. If a waiver of the Commission's Rule(s) is being requested, 6a must be answered 'Y'.</p>	() <u>Y</u> es <u>N</u> o

Assignor/Licensee Information

17) Assignor/Licensee is a(n): (Select One)					
<input type="checkbox"/> Individual	<input type="checkbox"/> Unincorporated Association	<input type="checkbox"/> Trust	<input type="checkbox"/> Government Entity	<input type="checkbox"/> Corporation	<input checked="" type="checkbox"/> Limited Liability Company
<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Consortium		
<input type="checkbox"/> Other: _____					
18) FCC Registration Number (FRN): 0004305223					
19) First Name (if individual):		MI:	Last Name:		Suffix:
20) Legal Entity Name (if not an individual): LiveTV, LLC					
21) Attention To: Briggs Kilborne					
22) P.O. Box:		And /Or	23) Street Address: 700 S. Babcock St.		
24) City: Melbourne			25) State: FL	26) Zip Code: 32901	
27) Telephone Number: (321)308-3877			28) Fax Number: (321)308-3939		
29) E-Mail Address: Briggs.Kilborne@livetv.net					

30) Demographics of Assignor/Licensee (Optional):

Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African-American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
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Assignor/Licensee Contact Representative

31) First Name: Christina		MI: H	Last Name: Burrow		Suffix: Esq
32) Company Name: Dow Lohnes PLLC					
33) Attention To: Christina Burrow					
34) P.O. Box:		And /Or	35) Street Address: 1200 New Hampshire Ave., NW		
36) City: Washington			37) State: DC	38) Zip Code: 20036	
39) Telephone Number: (202)776-2687			40) Fax Number: (202)776-2000		
41) E-Mail Address: cburrow@dowlohnesh.com					

Transferor Information (for Transfers of Control only)

42) Transferor is a(n): (Select One)			
<input type="checkbox"/> Individual	<input type="checkbox"/> Unincorporated Association	<input type="checkbox"/> Trust	<input type="checkbox"/> Government Entity
<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company		
<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Consortium
<input type="checkbox"/> Other: _____			
43) FCC Registration Number (FRN):			
44) First Name (if individual):	MI:	Last Name:	Suffix:
45) Legal Entity Name (if not an individual):			
46) Attention To:			
47) P.O. Box:	And /Or	48) Street Address:	
49) City:		50) State:	51) Zip Code:
52) Telephone Number:		53) Fax Number:	
54) E-Mail Address:			

55) Demographics of Transferor (Optional):

Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African-American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
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Transferor Contact Representative

56) First Name:	MI:	Last Name:	Suffix:
57) Company Name:			
58) Attention To:			
59) P.O. Box:	And /Or	60) Street Address:	
61) City:		62) State:	63) Zip Code:
64) Telephone Number:		65) Fax Number:	
66) E-Mail Address:			

Assignee/Transferee Information

67) Assignee/Transferee is a(n): (Select One)					
<input type="checkbox"/> Individual	<input type="checkbox"/> Unincorporated Association	<input type="checkbox"/> Trust	<input type="checkbox"/> Government Entity	<input type="checkbox"/> Corporation	<input checked="" type="checkbox"/> Limited Liability Company
<input type="checkbox"/> General Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Consortium		
<input type="checkbox"/> Other: _____					
68) FCC Registration Number (FRN): 0014830616					
69) First Name (if individual):		MI:	Last Name:		Suffix:
70) Legal Entity Name (if not an individual): AC BidCo LLC					
71) Attention To: Marguerite Elias					
72) Real Party in Interest FCC Registration Number (FRN):					
73) Name of Real Party in Interest:					
74) P.O. Box:		And /Or	75) Street Address: 1250 N. Arlington Heights Rd, Suite 500		
76) City: Itasca			77) State: IL	78) Zip Code: 60143	
79) Telephone Number: (630)647-1566			80) Fax Number: (630)647-1766		
81) E-Mail Address: melias@gogoair.com					

82) Demographics of Assignee/Transferee (Optional):

Race: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African-American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	Ethnicity: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino	Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
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Assignee/Transferee Contact Representative (if other than Assignee/Transferee)

83) First Name: Michele		MI: C	Last Name: Farquhar		Suffix:
84) Company Name: Hogan Lovells US LLP					
85) Attention To: Michele Farquhar					
86) P.O. Box:		And /Or	87) Street Address: 555 Thirteenth Street, NW		
88) City: Washington			89) State: DC	90) Zip Code: 20004	
91) Telephone Number: (202)637-5663			92) Fax Number: (202)673-5910		
93) E-Mail Address: michele.farquhar@hoganlovells.com					

Ownership Disclosure Information

94a) Is the Assignee/Transferee required to file FCC Form 602, Ownership Disclosure Information for the Wireless Telecommunications Services?	(<input type="radio"/> Y) <input checked="" type="radio"/> Yes <input type="radio"/> No
94b) If 94a is 'Y', provide the File Number of the FCC Form 602 that is required to be submitted in conjunction with this application or is already on file with the FCC.	File Number: <u>0005193958</u>

Alien Ownership Information (If any answer is 'Y', provide an attachment explaining the circumstances)

95) Is the Assignee/Post-transfer Licensee a foreign government or the representative of any foreign government?	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
96) Is the Assignee/Post-transfer Licensee an alien or the representative of an alien?	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
97) Is the Assignee/Post-transfer Licensee a corporation organized under the laws of any foreign government?	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
98) Is the Assignee/Post-transfer Licensee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
99a) Is the Assignee/Post-transfer Licensee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country?	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
<p>99b) If 99a is 'Y', has the Assignee/Post-transfer Licensee received a ruling(s) under Section 310(b)(4) of the Communications Act with respect to the same radio service(s) and geographic coverage area(s) involved in this application?</p> <p>If the answer to 99b is 'Y', include in the exhibit required by Item 99a the citation(s) of the declaratory ruling(s) received by the Assignee/Post-transfer Licensee (i.e., DA or FCC Number, FCC Record citation if available, and release date).</p> <p>If 99b is 'N', attach to this filing a date-stamped copy of a request for a foreign ownership ruling pursuant to Section 310(b)(4) of the Communications Act. It is not necessary to file a request for a foreign ownership ruling if the Applicant includes in the exhibit required by Item 99a a showing that the requested license(s) is exempt from the provisions of Section 310(b)(4).</p>	(<input type="radio"/>) <input checked="" type="radio"/> Yes <input type="radio"/> No

Basic Qualification Information

<p>100) Has the Assignee/Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission?</p> <p>If 'Y', attach an exhibit explaining the circumstances.</p>	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
<p>101) Has the Assignee/Transferee or any party to this application, or any party directly or indirectly controlling the Assignee/Transferee ever been convicted of a felony by any state or federal court?</p> <p>If 'Y', attach an exhibit explaining the circumstances.</p>	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No
<p>102) Has any court finally adjudged the Assignee/Transferee, or any party directly or indirectly controlling the Assignee/Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?</p> <p>If 'Y', attach an exhibit explaining the circumstances.</p>	(<input type="radio"/> N) <input checked="" type="radio"/> Yes <input type="radio"/> No

Assignor/Transferor Certification Statements

- 1) The Assignor/Transferor certifies either that (1) the authorization will not be assigned or that control of the license(s) will not be transferred until the consent of the Federal Communications Commission has been given, or (2) prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers. See Section 1.948(c)(1) of the Commission's Rules.
- 2) The Assignor/Transferor certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
- 3) The Assignor/Transferor certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.

Typed or Printed Name of Party Authorized to Sign

103) First Name: Karen	MI:	Last Name: Hawkins	Suffix:
104) Title: Controller and Secretary			
Signature: Karen Hawkins			105) Date: 05/04/2012
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).			

Assignee/Transferee Certification Statements

1)	The Assignee/Transferee certifies either that (1) the authorization(s) will not be assigned or that control of the license(s) will not be transferred until the consent of the Federal Communications Commission has been given, or (2) prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See Section 1.948(c)(1) of the Commission's Rules.
2)	The Assignee/Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.
3)	The Assignee/Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership or attribution rules.* *If the Assignee/Transferee has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.
4)	The Assignee/Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor/Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accrued by, or any suit or proceeding had or commenced against the Assignor/Transferor prior to this assignment/transfer.
5)	The Assignee/Transferee certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
6)	The Assignee/Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the Commission's Rules for the definition of "party to the application" as used in this certification.
7)	The Assignee/Transferee certifies that it is not in default on any payment for Commission licenses and that it is not delinquent on any non-tax debt owed to any federal agency.

Typed or Printed Name of Party Authorized to Sign

106) First Name: Marguerite	MI:	Last Name: Elias	Suffix:
107) Title: Sr. Vice President and General Counsel			
Signature: Marguerite Elias			108) Date: 05/04/2012
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).			

Authorizations To Be Assigned or Transferred

108) Call Sign	109) Radio Service Code	110) Location Number	111) Path Number (Microwave only)	112) Frequency Number	113) Lower or Center Frequency (MHz)	114) Upper Frequency (MHz)	115) Constructed Yes / No
WQFX729	CJ - Commercial Aviation Air-Ground Radiotelephone (800 MHz band)						Y

Attachment(s):

Type	Description	Date Entered
W	<u>Public Interest Statement and Request for Waiver</u>	05/04/2012

PUBLIC INTEREST STATEMENT
AND REQUEST FOR WAIVERS

AC BidCo, LLC (“AC BidCo”), along with its corporate parent Gogo Inc. (collectively with its subsidiaries, “Gogo”),¹ together with LiveTV, LLC (“LiveTV”), hereby seek waivers of certain Part 22 rules to permit the assignment of call sign WQFX729, a one-megahertz commercial air-to-ground (“ATG”) license, from LiveTV to AC BidCo, as requested in the attached FCC Form 603 application.

I. BACKGROUND

Gogo, formerly known as Aircell, is the world’s leading provider of in-flight connectivity. In the U.S., Gogo operates a terrestrial-based ATG network relying on three megahertz of ATG spectrum obtained in Auction 65. LiveTV, a subsidiary of JetBlue Airways Corporation (“JetBlue”), obtained the one-megahertz ATG license offered in Auction 65. Although the parties seek to assign the LiveTV license to AC BidCo, Section 22.853 of the Commission’s rules states that “no individual or entity may hold, directly or indirectly, a controlling interest in licenses authorizing the use of more than three megahertz of spectrum” in the 800 MHz ATG band.² The Commission adopted Section 22.853 more than seven years ago as part of its reform of the 800 MHz ATG band, finding that the eligibility restriction would

¹ Gogo Inc. is the holding company for two operating subsidiaries, Gogo LLC, which serves the commercial aviation market, and Aircell Business Aviation Services LLC, which serves the general aviation market. AC BidCo is Gogo Inc.’s license-holding subsidiary.

² 47 C.F.R. § 22.853.

promote competition and the more efficient use of the spectrum.³ However, the Commission specifically noted that as the market developed, it would “consider a waiver of the eligibility rule based on a showing that market conditions and other factors would favor common control of more than three megahertz without resulting in a significant likelihood of substantial competitive harm.”⁴ As described below, market conditions now favor common control of the four megahertz of ATG spectrum based on consumer expectations for in-flight broadband offerings, and vibrant competition by satellite providers quells any concern about competitive harm.

II. CURRENT COMPETITIVE CONDITIONS AND CONSUMER DEMAND SUPPORT WAIVER OF THE ATG ELIGIBILITY RULE

To obtain a waiver of the Commission’s rules, an applicant must demonstrate either that: (i) the underlying purpose of the rule at issue would not be served or would be frustrated by its application, and that a waiver is in the public interest; or (ii) in view of the unique circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest.⁵

Application of Section 22.853 in these circumstances would frustrate the purpose of the rule, because the market assumptions underlying the rule’s adoption have changed. When it promulgated the rule, the FCC explained that “no more than three megahertz of spectrum is required to deliver high-speed air-ground services using today’s broadband technologies.”⁶ The

³ *Amend. of Pt. 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecomm. Servs.*, Report and Order, FCC 04-287 ¶¶ 41-43 (2004) (“2004 ATG Order”).

⁴ *Id.*

⁵ 47 C.F.R. § 1.925(b)(3); *see also* 47 C.F.R. § 1.3 (stating that the Commission can waive or suspend any portion of its rules “for good cause shown”). Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. *Northeast Cellular Tel. Co. v. Fed. Communications Comm’n*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. Fed. Communications Comm’n*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁶ 2004 ATG Order, ¶ 41.

Commission worried specifically that “[p]ermitting one party to control the entire four megahertz of spectrum comprising the band therefore could result in one megahertz of spectrum (25 percent of the band) lying fallow.”⁷ Moreover, the Commission expected that a one-megahertz license would be adequate “for many potential uses.”⁸

As the market has developed, however, it has become evident that one megahertz is insufficient to provide a service that meets consumers’ data demands. JetBlue used the LiveTV license to trial a narrowband ATG offering but discontinued the service last year after concluding that the limited bandwidth “wouldn’t be sustainable over a longer period of time when more and more customers want to use it.”⁹ Instead of relying on the LiveTV license, JetBlue announced that it would install a satellite-based system to offer “broadband functionality worthy of today’s interactive personal technology needs.”¹⁰ Currently, the LiveTV license is only used to offer narrowband service to a small number of general aviation customers still using the legacy MagnaStar® system.¹¹ (Under the proposed transaction, Gogo would acquire these customers and offer to transition them to a Gogo service plan, ensuring no discontinuance of service.)

While the one-megahertz ATG license is of limited use on its own, it could be put to extremely intensive and efficient use if incorporated into Gogo’s terrestrial ATG network. As in

⁷ *Id.*

⁸ *Id.*

⁹ Will Horton, *Airlines Feel the Need for Wi-Fi Speed*, Airline Passenger Experience Association Editor’s Blog (Feb. 16, 2012), <http://blog.apex.aero/ife/airlines-feel-wifi-speed/> (quoting JetBlue director of product development Rachel McCarthy).

¹⁰ Adrian Schofield, *JetBlue, ViaSat Sign MOU for Inflight Broadband*, Aviation Daily 7 (Sept. 23, 2010) (quoting JetBlue CEO David Barger).

¹¹ MagnaStar® is the legacy in-flight telephone and data service for general aviation customers previously operated by Verizon Airfone. See www.teledynecontrols.com/productsolution/MagnaStar.asp. MagnaStar® is a registered trademark of Raytheon.

the wireless market more generally,¹² rapidly increasing demand for Gogo's service is pushing the bounds of its current spectrum capacity. An increasing number of passengers are accessing Gogo's services for bandwidth-intensive uses on an increasing number of airplanes.¹³ In addition to "regular" commercial airline passengers, several government agencies with public safety responsibilities use the Gogo network and could benefit from increased ATG capabilities. Likewise, the airlines are interested in expanding the use of Gogo's network for airline operational communications.¹⁴ Already, like others in the industry, Gogo finds that its network is experiencing capacity constraints on certain flights. Additional spectrum would help to relieve this demand pressure.¹⁵ The one additional megahertz of LiveTV's spectrum could be efficiently integrated into Gogo's network. A number of capacity enhancing techniques using this spectrum are under investigation, including the possibility of expanding from a single 1.5 MHz CDMA channel in each direction to two channels in each direction by employing overlapping, cross-polarized channels, as Aircell had originally proposed as a possible spectrum sharing option in the 2004 ATG proceeding.¹⁶

¹² See, e.g. FCC, *Spectrum Crunch*, <http://www.fcc.gov/encyclopedia/spectrum-crunch>.

¹³ As of March 31, 2012, almost 1,500 commercial aircraft were equipped with Gogo service, and Gogo had signed contracts with airline partners to install equipment on an additional 500 aircraft. See also Fred George, *Next-Gen Wi-Fi Soars*, Aviation Week & Space Technology (Feb. 27, 2012) (quoting an industry analyst as noting that "with more people carrying Wi-Fi enabled devices [aboard planes], the potential addressable market has increased exponentially").

¹⁴ See *2004 ATG Order*, ¶ 48 (noting the suitability of the ATG band for homeland security applications, for communications with airline personnel, and for monitoring critical avionics systems).

¹⁵ In addition to increasing its 800 MHz spectrum holdings, Gogo is also looking to technological improvements as well as satellite-based services to expand capacity. *Aircell Announces Technology Roadmap* (March 9, 2011), <http://www.aircell.com/press-room/aircell-announces-technology-roadmap> (Gogo "will enable connectivity via a next generation version of ATG ("ATG-4") as well as Ka-band satellite technology.").

¹⁶ *2004 ATG Order*, ¶ 26. If this option is used, it would result in an expansion of capacity significantly in excess of the nominal 25% increase in spectrum represented by the one additional megahertz.

While an integrated network using four megahertz of ATG spectrum would clearly result in more intensive and efficient use of the 800 MHz ATG band, the significant increase in competition from satellite providers mitigates any concern about competitive harm if the Commission waives the eligibility rule. For example, Row 44 provides in-flight broadband services for Southwest Airlines and international carriers, recently equipping its 250th plane.¹⁷ Panasonic Avionics recently secured a contract to fulfill United Continental Holding's commitment to provide Wi-Fi on more than 300 aircraft.¹⁸ And ViaSat has agreements to provide bandwidth to LiveTV for in-flight broadband services on JetBlue as well as on certain United aircraft.¹⁹ Moreover, newer satellite services, such as those to be launched in the Ka-band, are much more cost-effective than the technology available in 2004, making them stronger competitors to a terrestrial-based network.²⁰ When it originally announced the rule, the Commission predicted the possibility that satellite providers would become serious competitors to 800 MHz ATG service.²¹ Almost eight years later, that is precisely what has happened.

Finally, granting the waiver would also harmonize the 800 MHz ATG band with Canada and Mexico, both of which have adopted a single four-megahertz band plan. If and when networks are constructed in those countries, operation of a U.S. network across the full four-megahertz band should facilitate seamless operations for cross-border flights.

¹⁷ See, e.g., *Row 44 Equips 250th Plane* (March 3, 2012), <http://row44.com/news-post/row-44-equips-250th-plane/>.

¹⁸ Andrew Moran, *United Continental Selects Panasonic to Install Wi-Fi on Flights*, Digital Journal (Nov. 8, 2011), <http://www.digitaljournal.com/article/314081>.

¹⁹ Jeffrey Hill, *ViaSat, JetBlue Finalize Plans for Ka-band In-flight Service*, Satellite Today (April 5, 2011), http://www.satellitetoday.com/twitter/ViaSat-JetBlue-Finalize-Plans-for-Ka-band-In-flight-Service_36491.html.

²⁰ Fred George, *Next-Gen Wi-Fi Soars*, Aviation Week & Space Technology (Feb. 27, 2012) (citing a ViaSat source claiming that their Ka-band connectivity “will be 90% less expensive than today's Ku-band systems”).

²¹ 2004 ATG Order, ¶ 46.

Given the facts discussed above, the standard for granting a waiver has been satisfied. Because of changes in market conditions (both more demand and more competition) since 2004, continued application of the eligibility rule would actually frustrate the underlying purposes of the rule. The public interest would best be served by enabling the greater ATG service capacity and spectrum use efficiencies that can be achieved by permitting common control of the full four megahertz of 800 MHz ATG spectrum.

III. PARTIAL WAIVER OF SECTIONS 22.861 AND 22.863

Out of an abundance of caution and to the extent staff deems it necessary, Gogo seeks a partial waiver of two technical operational rules, Sections 22.861 (“Emission Limitations”) and 22.863 (“Frequency Stability”). Partial waiver of these rules will ensure Gogo’s ability to integrate the spectrum in the most efficient manner.

If the Commission consents to the proposed transaction for the assignment of the LiveTV license, Gogo will hold two separate but contiguous ATG licenses, forming a combined two megahertz of spectrum in each direction. The common boundaries between the two licenses are at 850.5 MHz for ground transmitters and at 895.5 MHz for airborne transmitters (the “Internal Boundaries”). Section 22.861 establishes an out-of-band emission (“OOBE”) limit for any emissions falling outside of “authorized operating frequency ranges.”²² Similarly, Section 22.863 requires that the frequency stability of any equipment used be sufficient to ensure that the occupied bandwidth of fundamental emissions “remains within the authorized frequency bands of operations.”²³ Under one possible interpretation of these rules, the emission limits would apply on a per-license basis, meaning that Gogo would be required to control its emissions at the

²² 47 C.F.R. § 22.861(a).

²³ 47 C.F.R. § 22.863.

Internal Boundaries. This interpretation would prevent Gogo from employing any technology using a channel size greater than 0.5 MHz that would overlap the Internal Boundaries.

Applying the emission limits at the Internal Boundaries would not serve the underlying purpose of the rules, which is to protect *other* licensees from interference, and would disserve the public interest by preventing the efficient use of spectrum.²⁴ Thus, to the extent necessary, Gogo seeks a partial waiver of the rules to clarify that the limits imposed by Sections 22.861 and 22.863 will not apply at the Internal Boundaries. Gogo does not seek any waiver of these rules with regard to the external boundaries of its licenses and will continue to provide the same level of protection to adjacent channel licensees as required by the rules. Therefore, there will be no new interference potential to adjacent channel licensees.

IV. CONCLUSION

The experiences of Gogo and LiveTV in launching ATG services based on a divided, three-plus-one megahertz band plan reflect the outcome that the Commission recognized might result when it acknowledged that “ultimately only one entity [may] operate[] in the 800 MHz air-ground band.”²⁵ Given the current technical and market realities, all ATG consumers – including airlines and public safety agencies – would benefit from the additional capacity and more efficient spectrum use that would result from the integrated operation of the ATG band. For these reasons, Gogo and LiveTV respectfully request that the Commission grant the waiver requests described herein and consent to the proposed license assignment.

²⁴ For these reasons, the Commission’s waiver standard is satisfied. *See* 47 C.F.R. § 1.925(b)(3)(i).

²⁵ *2004 ATG Order*, ¶ 40.